

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

S3 19 Cr. 497 (NSR)

YAKOV WEINGARTEN

a/k/a “YAAKOV,”

a/k/a “YANKEV NACHUM,”

a/k/a “YAKOV NACHUM,”

SHMIEL WEINGARTEN, and

YOIL WEINGARTEN,

a/k/a “YOLE,”

a/k/a “YOEL,”

Defendants.

THE GOVERNMENT’S MOTIONS *IN LIMINE*

The Government respectfully submits this memorandum of law in support of motions *in limine* for the admission at trial of (i) testimony regarding instances of uncharged criminal conduct, wrongs, or bad acts in connection with the rules within the Lev Tahor community; and (ii) statements by co-conspirators in furtherance of the conspiracy, which are admissible pursuant to Rule 801(d)(2)(E) and/or statements against the declarants’ penal interest under Rule 804(b)(3). The Government also seeks (i) to preclude the defense from raising several irrelevant arguments during trial, and (ii) to admit into evidence certain business records on the basis of written declarations pursuant to Rule 803(6) and 902(11).

his lieutenant. Helbrans, Rosner and the Weingartens, among various others, were known within the community as the “Hanhala” (translation: management) of Lev Tahor. Helbrans established the rules for the community and, together with the Hanhala, managed the operational affairs of the community. These community rules covered every aspect of the lives of Lev Tahor’s adherents, including their studies, their daily schedules, their interactions with family members, their interactions with individuals outside of Lev Tahor, and their diets. In addition, the Hanhala enlisted members of the community to assist in enforcing the community rules.

When Helbrans assumed leadership of the community following his father’s death, he and the rest of the Hanhala seized even greater control over the community by implementing more restrictive rules. These new rules, among other things, involved even closer monitoring of members, stricter dietary limitations, and increased forced separations of family members. As discussed further below, these new rules also required forced marriages of minors. The Government expects to prove at trial that the Hanhala was intimately involved in arranging marriages involving minors. In particular, when Jane Doe was 12 years old, Helbrans arranged Jane Doe’s engagement to co-defendant (and the son of Mayer Rosner) Jacob Rosner, who was 18 years old at the time. Jane Doe and Jacob Rosner were religiously “married” when she was 13 and he was 19. Following the “marriage,” Jacob regularly had sex with then 13-year-old Jane Doe.

In approximately October 2018, the mother of Jane Doe (the “Mother”) determined that it was no longer safe for her children to remain under the authority of her brother, Helbrans, the leader of Lev Tahor. She escaped from the community’s compound and—with the help of U.S. authorities—arrived in the United States in early November 2018.³ On or about November 14,

³ While the Mother was only able to escape from the community’s compound with three of her children, all six of the children were eventually reunited with her in New York. Three of her children, including the Victims, were brought to the United States only after members of Lev

name. The kidnappers also gave the Victims airplane tickets and passports that contained the names of two of Helbrans' children. Helbrans and the Victims, using disguises meant to conceal their identities, proceeded through airport security in Scranton. They then flew to Washington D.C., then to Texas, and then took a bus across the border to Mexico. Shmiel, Jacob Rosner, and Mordechai Malka took separate routes out of the country, all finding their way to Mexico.

Once in Mexico, Jane Doe was reunited with Jacob, along with Yoil and other coconspirators, in Mexico City and transported to several hotels and residences. During this period, the kidnappers sought and received logistical help from members of Lev Tahor in the United States, Mexico, and Guatemala, including Yakev. At various times, Helbrans and the Victims were met by other co-conspirators, including Rosner and his son, Jacob Rosner (Victim-1's adult "husband"). On or about December 18, 2018, Mexican law enforcement raided what appeared to be a Lev Tahor safe house in San Miguel Tlaixpan, Mexico, and detained Helbrans, Mayer Rosner, Jacob Rosner, and Matityau Malka, among other individuals. These defendants were subsequently deported to the United States. The Victims were in the same residence at the time of the defendants' arrests, but they were hidden in a closet and were not detected by Mexican authorities.

Left alone in the house in San Miguel Tlaixpan, the Victims got in touch with Yoil by using an abandoned cellphone in the house. Yoil instructed the Victims to go to another person's home

where Yoil and Shmiel met the Victims. Yoil and Shmiel then transported the Victims to multiple homes and had them wear dark makeup on their faces to conceal their identities.

Finally, on December 27, 2018, the Victims were recovered in a hotel in Mexico. At the time, they were accompanied by defendants Shmiel and Yoil.

In March 2019, approximately four months after the December Kidnapping, Yakev—along with Helbrans and Matityau Malka—attempted to kidnap Jane Doe a second time (the “March Attempted Kidnapping”). During this attempt, Matityau Malka (“Matityau”) approached Jane Doe, who was living with the Mother in Brooklyn, on several occasions. During these encounters, Matityau provided Jane Doe with cellular telephones so that she could communicate with the kidnappers.

In particular, Jane Doe used these phones to communicate with Yakev, who was acting as the head of the community following Helbrans’ incarceration in December 2018. Those discussions included plans to remove Jane Doe from New York in a similar manner as the December 2018 Kidnapping. Yakev also spoke with the Mother about the co-conspirators’ plans to kidnap Jane Doe again, and threatened her by insisting that their efforts to return the Victims to Lev Tahor would not end until they were successful. Additionally, during a call from Westchester County Jail in March 2019, Helbrans told the Mother that he would take the children away from her.

Two years later, in March 2021, another member of Lev Tahor approached the Victims in New York and attempted to kidnap them once again. At the time of this attempted kidnapping, the Lev Tahor member possessed three bus tickets from New York to Georgia, drop phones, children’s clothing, and birth certificates for two children of ages similar to the Victims.

ARGUMENT

I. The Court Should Admit The Defendants’ Prior Bad Acts, Either as Direct Evidence or Pursuant to Rule 404(b)

At trial, the Government anticipates eliciting testimony from Jane Doe, the Mother, CC-1, and another former Lev Tahor member (“Witness-1”)—each of whom testified in prior trials in this case—about the rules and practices within Lev Tahor. As detailed further below, this testimony is admissible as direct evidence of the kidnapping and sexual exploitation conspiracies. To the extent, however, that any of this testimony constitutes “evidence of any other crimes, wrong or act,” it is admissible as direct evidence of the charged crimes, or, in the alternative, pursuant to Federal Rule of Evidence 404(b), to show the defendants’ motive, intent, knowledge, opportunity, and a common scheme or plan.

A. Applicable Law

1. Other Acts Evidence as Intrinsic or Direct Proof

If evidence is relevant to a charged offense, it is generally admissible at trial. Fed. R. Evid. 402. Evidence is relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401.

“An act that is alleged to have been done in furtherance of the alleged conspiracy . . . is not an ‘other’ act within the meaning of Rule 404(b); rather, it is part of the very act charged.” *United States v. Concepcion*, 983 F.2d 369, 392 (2d Cir. 1992). Uncharged acts are admissible in a conspiracy case where they are used to (i) explain the development of the illegal relationship between co-conspirators; (ii) explain the mutual criminal trust that existed between co-conspirators; and/or (iii) complete the story of the crime charged. *See United States v. Mercado*, 573 F.3d 138, 141–42 (2d Cir. 2009). In other words, evidence of uncharged criminal activity is

admissible “if it arose out of the same transaction or series of transactions as the charged offense, if it is inextricably intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial.” *United States v. Hsu*, 669 F.3d 112, 118 (2d Cir. 2012) (citation and internal quotation marks omitted); *see also United States v. Quinones*, 511 F.3d 289, 309 (2d Cir. 2007). Even if the evidence does not directly establish an element of the offense charged, it can be admitted “in order to provide background for the events alleged in the indictment.” *United States v. Coonan*, 938 F.2d 1553, 1561 (2d Cir. 1991) (citation omitted). “In particular, evidence of other bad acts may be admitted to provide the jury with the complete story of the crimes charged by demonstrating the context of certain events relevant to the charged offense.” *United States v. Inserra*, 34 F.3d 83, 89 (2d Cir. 1994) (citations omitted); *see also United States v. Gonzalez*, 110 F.3d 936, 941 (2d Cir. 1997) (“To be relevant, evidence need only tend to prove the government’s case, and evidence that adds context and dimension to the government’s proof of the charges can have that tendency. Relevant evidence is not confined to that which directly establishes an element of the crime.”).

2. Other Acts Evidence Pursuant to Rule 404(b)

Federal Rule of Evidence 404(b) provides, in relevant part, that:

Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

It is well established that evidence of uncharged crimes, wrongs, or other acts is admissible under Rule 404(b) if the evidence (1) is advanced for a proper purpose; (2) is relevant to an issue in the case; (3) has probative value that is not substantially outweighed by any unfair prejudicial effect, and (4) if requested, is admitted with limiting instructions to the jury. *See United States v.*

3. Rule 403

Regardless of whether the evidence is admitted as direct evidence or as other acts evidence under Rule 404(b), the evidence is, like all other evidence, admissible under Federal Rule of Evidence 403 only if its probative value is not substantially outweighed by the danger of unfair prejudice. Rule 403 provides that relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid. 403. Evidence is unfairly prejudicial “only when it tends to have some adverse effect upon a defendant beyond tending to prove the fact or issue that justified its admission into evidence.” *United States v. Figueroa*, 618 F.2d 934, 943 (2d Cir. 1980). Other crimes evidence is not unfairly prejudicial where it is not “any more sensational or disturbing than the crimes” with which the defendant has been charged. *United States v. Roldan-Zapata*, 916 F.2d 795, 804 (2d Cir. 1990); *see also United States v. Livoti*, 196 F.3d 322, 326 (2d Cir. 1999) (Evidence is not unduly prejudicial under Rule 403 when it is not “more inflammatory than the charged crime[s].”); *United States v. Thompson*, 359 F.3d 470, 479 (7th Cir. 2004) (“Evidence is unfairly prejudicial if it appeals to the jury’s sympathies, arouses its sense of horror, provokes its instinct to punish, or otherwise may cause a jury to base its decision on something other than the established propositions in the case.” (citation and internal quotation marks omitted)). The fact that evidence may be damning does not render it inadmissible. *See United States v. Cirillo*, 468 F.2d 1233, 1240 (2d Cir. 1972).

B. Discussion

The Government anticipates testimony regarding the rules within the Lev Tahor community and how those rules were enforced, in order to prove the Weingarten’s direct

involvement in both the sexual exploitation and kidnapping conspiracies. This testimony is expected to include some instances of uncharged criminal conduct or other wrongs or bad acts.

For example, the Government anticipates that:

- CC-1 is expected to testify that one of the primary changes instituted when Helbrans took over as a leader of Lev Tahor was the introduction of arranged marriages of children as young as 12 or 13 years old. Jane Doe was one of the first examples of this policy change.
- CC-1 is expected to testify that members of the Hanhala were involved in arranging all of the marriages in the Lev Tahor community, including several that involved minor children.
- CC-1 is expected to testify that members of the Hanhala directed women in Lev Tahor to deliver babies inside their homes instead of at a hospital, particularly to conceal the ages of underage mothers.
- CC-1 is expected to testify that he attended Yakev's wedding to a 14-year-old girl in a secret ceremony in Canada. Witness-1 is also expected to testify about Yakev's secret wedding.
- Witness-1 is expected to testify that, when he was 25 years old, the leaders of Lev Tahor directed him to "marry" a 15-year-old girl, though they were not legally married at that time.
- Witness-1 is expected to testify that, prior to the wedding, Yakev and Yoil Weingarten provided him with instructions on how to have sex with his wife.
- Witness-1 is expected to testify that, during the night following his wedding, Rosner called him to inquire as to whether he had had intercourse with his wife.
- Witness-1 is expected to testify that, in the months following his wedding, Rosner talked to Witness-1 about Witness-1's sex life with his wife on multiple occasions.
- Witness-1 is expected to testify that the practice of underage marriages was common knowledge within the Lev Tahor community, that he observed multiple marriages of children, that members of the Hanhala were present for those weddings, and that some weddings involving children occurred in secret to hide the child marriages from outsiders.

This anticipated testimony is crucial to "provide the jury with the complete story of the crimes charged." *Inserra*, 34 F.3d at 89. Indeed, this testimony goes to the heart of the charged

conspiracy for several reasons. For this reason, the Court previously admitted this evidence in the trial against Helbrans and Rosner, finding the evidence to be “inextricably intertwined with the evidence regarding the charged offenses.” (*See* Dkt. No. 388 (“Helbrans MIL Opinion”) 35-36). The Court also previously admitted some of this evidence in the trial against Mordechay Malka and Matityau Malka because of their relevance to the kidnapping counts. (*See* Dkt. No. 625 “Malkas MIL Opinion” 19).

This testimony is highly relevant for several reasons. *First*, evidence of the defendants’ and their coconspirators’ involvement in child marriages, and in particular Jane Doe’s child marriage, manifests their direct involvement in the child exploitation offenses charged in Counts One and Two. Indeed, Jane Doe and Jacob Rosner got married and engaged in illegal sexual intercourse because the Hanhala required them to do so. And, as the Government intends to prove at trial, a dominant purpose of the subsequent kidnapping was to continue Jane Doe and Jacob Rosner’s illicit sexual relationship. Because evidence of how and when the Hanhala’s dictates were implemented is crucial to explaining the charged conspiracies, this evidence is “inextricably intertwined with the evidence regarding the charged offense[s],” *Hsu*, 669 F.3d at 118, in that it “provide[s] background for the events alleged in the indictment,” *Coonan*, 938 F.2d at 1561.

Second, this evidence is crucial to explaining the story of how the kidnapping unfolded. If the jury were deprived of evidence about the defendants’ involvement in child marriages and the practices around marriage and sex in the Lev Tahor community, then the whole rationale for the Mother leaving Guatemala and the defendants subsequently executing a kidnapping would be without vital context. Indeed, a jury already found that a “dominant purpose” of the December Kidnapping was re-uniting Jane Doe with Jacob so that they would resume their sexual relationship

thus demonstrating how central Jane Doe's child marriage was to the kidnapping plot. Deleting this important fact from the narrative would thus leave a significant gap in the juror's minds.

And *third*, this evidence "explain[s] to the jury how the illegal relationship between the participants in the crime developed." *Pitre*, 960 F.2d at 1119. Lev Tahor is the connective tissue linking the Weingartens to their conspirators. Indeed, the Weingartens' roles and responsibilities as members of the Hanhala, and the way the Hanhala controlled every aspect of Lev Tahor members' lives and together made and enforced restrictive rules that all their community members were required to follow, explains why the Weingartens were willing to undertake crucial roles in the kidnappings.

In the alternative, this evidence is admissible pursuant to Rule 404(b) to show the defendants' motive, intent, knowledge, opportunity, and a common scheme or plan. The defendants may present some combination of the following arguments: (i) they were unaware of Jane Doe and Jacob Rosner's sexual relationship; (ii) they did not seek to facilitate the continuation of Jane Doe and Jacob Rosner's sexual relationship during or after the kidnapping; (iii) reuniting Jane Doe with Jacob Rosner was not a dominant purpose of the kidnapping; and/or (iv) Jacob Rosner was not acting at their direction in marrying Jane Doe, engaging in a sexual relationship with her, and/or participating in her kidnapping in order to continue their sexual relationship. Evidence of the rules within Lev Tahor surrounding familial, marital and sexual relationships would thus be highly probative evidence to rebut these potential defenses by demonstrating the defendants' motive, intent, and knowledge regarding their participation in the charged conspiracies. Moreover, this evidence manifests the defendants' "common scheme or plan" to facilitate the sexual exploitation of young girls by marrying them off to older men in their community. *Reed*, 639 F.2d at 906.

